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AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH, CLERK

*Attorneys for Defendant Impax Laboratories, Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

DEPOMED, INC.

Plaintiffs

v.

IMPAX LABORATORIES, INC., PAR  
PHARMACEUTICAL COMPANIES, INC.  
and PAR PHARMACEUTICAL, INC.

Defendants.

Civil Action No. 12-2154 (JAP) (TJB)

**JOINT STIPULATION OF DISMISSAL  
BY DEPOMED, INC. AND IMPAX LABORATORIES, INC.**

WHEREAS, Defendant Impax Laboratories, Inc. (“Impax”) submitted Abbreviated New Drug Application (“ANDA”) No. 203666 to the United States Food and Drug Administration (“FDA”) seeking approval to commercially make, use, sell, or offer to sell generic versions of the drug product GRALISE® (“Impax’s ANDA Product”);

WHEREAS Plaintiff Depomed, Inc. (“Depomed”) commenced Civil Action No. 12-2154 (JAP) (TJB) against Impax on April 10, 2012, (“Impax Action”) alleging infringement of claims of U.S. Patent Nos. 6,340,475 (“the ‘475 patent”); 6,488,962 (“the ‘962 patent”); 6,635,280 (“the ‘280 patent”); 6,723,340 (“the ‘340 patent”); 7,731,989 (“the ‘989 patent”); and 7,438,927 (“the ‘927 patent”), based *inter alia*, on the submission of ANDA No. 203666 to the FDA;

WHEREAS Impax answered and asserted counterclaims against Depomed in that action alleging, *inter alia*, that the claims of the ‘475 patent, the ‘962 patent, the ‘280 patent, the ‘340 patent, the ‘989 patent, and the ‘927 patent are invalid and not infringed;

WHEREAS, on July 13, 2012, Depomed filed a motion to amend its complaint to add an allegation of infringement of claims of U.S. Patent No. 8,192,756 (“the ‘756 patent”) based, *inter alia*, on Impax’s submission of ANDA No. 203666 to the FDA, on July 19, 2012, Impax informed Depomed that they will not oppose the motion, and on August 7, 2012, the Court granted Depomed’s motion to amend its complaints;

WHEREAS, on August 24, 2012, Impax answered the amended complaint and asserted counterclaims against Depomed alleging that the claims of the ‘756 patent were invalid and/or not infringed;

WHEREAS on September 28, 2012, Depomed amended its complaint pursuant to a consent stipulation to add an allegation of infringement of claims of U.S. Patent No. 8,252,332 (“the ‘332 patent”) based, *inter alia*, on Impax’s submission of ANDA No. 203666 to the FDA;

WHEREAS Depomed has brought claims and actions for patent infringement against other parties, including Par Pharmaceutical Cos. Inc., Par Pharmaceutical, Inc., Abon Pharmaceuticals, LLC, Actavis Elizabeth LLC, Actavis, Inc., Incepta Pharmaceuticals Co. Ltd., Watson Laboratories, Inc.-Florida, Zydus Pharmaceuticals (USA), Inc. and Cadila Healthcare Ltd. and those actions have been consolidated for pre-trial purposes with the present action against Impax;

WHEREAS the Impax Action is in its early stages (as fact discovery is open until August 16, 2013) and neither Depomed nor Impax has noticed any depositions yet;

WHEREAS on September 26, by way of letter to the FDA, Impax withdrew its submission of ANDA No. 203666 to FDA;

WHEREAS, upon withdrawal of Impax's ANDA No. 203666, Impax will have no intention of seeking approval to commercially make, use, sell, or offer to sell Impax's ANDA Product; and

WHEREAS, the parties desire to conserve the resources of the Court and the parties and to avoid any unnecessary litigation:

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by Depomed and Impax, by and through their respective counsel, subject to the approval of the Court, as follows:

1. Impax agrees to take reasonable efforts, if any are necessary, to confirm further with the FDA that Impax has withdrawn ANDA No. 203666 for Gabapentin Tablets in the 300mg and 600mg dosage strengths, and that the FDA should take no further action with respect to such ANDA application.

2. Depomed and Impax desire to dismiss the present Impax Action.

3. All affirmative defenses, claims, and counterclaims that have been or could have been raised by Depomed are hereby dismissed without prejudice.

4. All affirmative defenses, claims, and counterclaims that have been or could have been raised by Impax are hereby dismissed without prejudice.

5. This stipulation does not constitute an admission by either party with respect to infringement, validity, and/or enforceability of the '475 patent, the '962 patent, the '280 patent, the '340 patent, the '989 patent, the '927 patent, the '756 patent, the '332 Patent or any other patents which are members of the family of the foregoing patents that may issue after the date of this stipulation.

6. This stipulation shall not constitute and shall not be construed to be a final judgment as to any claim asserted in the above-captioned action, or any defense thereto.

7. Depomed and Impax shall each bear its own costs and attorney fees.

8. This stipulation shall be binding on Depomed and any of its successors-in-interest and/or assignees and/or licensees, and shall inure to the benefit of each of Depomed's current and future parents, subsidiaries, affiliates, officers, directors, employees, customers, distributors, suppliers, insurers, attorneys, representatives and agents of any kind, and their successors and assigns, if any.

9. This stipulation shall be binding on Impax and any of its successors-in-interest and/or assignees and/or licensees, and shall inure to the benefit of each of Impax's current and future parents, subsidiaries, affiliates, officers, directors, employees, customers, distributors, suppliers, insurers, attorneys, representatives and agents of any kind, and their successors and assigns, if any.

IT IS SO STIPULATED:

By: /s/ Leda Dunn Wettre

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*Attorneys for Defendant  
Impax Laboratories, Inc*

Dated: October 24, 2012

IT IS SO ORDERED THIS 12<sup>th</sup> day of Nov, 2012.

  
\_\_\_\_\_  
Hon. Joel A. Pisano, U.S.D.J.